

Before The
POSTAL REGULATORY COMMISSION
WASHINGTON, D.C. 20268-0001

In the Matter of: :
Pimmit Branch :
Falls Church, Virginia 22043 : Docket No. A2011-90
(Elaine J. Mittleman, Petitioner):
:

**REPLY OF PETITIONER
TO OPPOSITION OF POSTAL SERVICE TO
MOTION TO REOPEN PIMMIT BRANCH
(November 29, 2011)**

Petitioner Elaine Mittleman hereby respectfully submits reply to the opposition of the United States Postal Service to Petitioner's motion to reopen the Pimmit Branch. The Pimmit Branch closed at the end of the business day on November 10, 2011.

ARGUMENT

**THE POSTAL SERVICE MUST COMPLY
WITH 39 U.S.C. §404(d)**

There has been a long-standing disagreement between the Postal Service and the Postal Regulatory Commission as to the interpretation and application of 39 U.S.C. § 404(d). The Postal Service has essentially addressed this disagreement by continuing to argue that it does not have to comply with 39 U.S.C. § 404(d). For example, in its opposition at page 3,

the Postal Service states that “section 404(d) does not apply.” Similarly, in its opposition at page 3, the Postal Service states that the Commission’s Rules of Practice for Post Office closings do not apply in this instance.

Petitioner understands that the different interpretations of 39 U.S.C. § 404(d) by the Postal Service and the Postal Regulatory Commission have created some awkward and anomalous situations. Thus, the Postal Service typically has asserted that it does not have to comply with 39 U.S.C. § 404(d). Then, in some situations, the Postal Service presents an argument by merely assuming that 39 U.S.C. § 404(d) applies. In other situations, such as the requirements of 39 U.S.C. § 404(d)(3) and (4), the Postal Service ignores those provisions for stations and branches and baldly asserts that it does not have to comply with those requirements.

The Postal Service bases its interpretation of 39 U.S.C. § 404(d) in large part on its reading and analysis of legislative history. According to the Postal Service, “Congress knowingly used ‘Post Office’ in its technical sense thereby excluding stations and branches from the scope of 39 U.S.C. § 404(d).” *See* Postal Service opposition at page 2, n. 8.

The Postal Service uses its own narration about what is the definition of a post office to then unilaterally exclude stations and branches from the statutory provisions of 39 U.S.C. § 404(d). This self-serving interpretation of

the statute by the Postal Service, which has the effect of excluding many postal customers from the protections of 39 U.S.C. § 404(d), is extremely troubling.

Moreover, good policy and fairness should encourage the Postal Service to treat all customers the same. The Postal Service should have an interest in ensuring that proper notice and factual determinations are made in closing decisions for all retail facilities. The Postal Service has not articulated a policy reason why stations and branches should receive limited procedural protections from closings and loss of adequate service.

Particularly in light of the budgetary problems of the Postal Service, there should be first-rate analysis on the financial impacts of all closing decisions. If the Postal Service closes profitable retail facilities and drives away customers, then the closings will exacerbate the lost revenue and declining reliance by the public on the facilities run by the Postal Service.

The interpretation of legislative history for any statute is a complicated matter and has been addressed in numerous cases. However, there is the fundamental proposition that the statute means what it says. If the language in the statute is clear, then there may be no need to evaluate the statute in light of legislative history. Petitioner submits that there is a strong argument that the language of 39 U.S.C. § 404(d) is clear and no legislative history is

needed to interpret it.

Moreover, even if the legislative history of 39 U.S.C. § 404(d) is evaluated, petitioner asserts that 39 U.S.C. § 404(d) should apply to all post office retail facilities, which include stations and branches. The Postal Service capitalizes “Post Office” in its argument that “Congress knowingly used ‘Post Office’ in its technical sense.” However, post office is not capitalized in 39 U.S.C. § 404(d) and the term is not used in whatever “technical sense” the Postal Service is attempting to construct.

Petitioner submits that a better reading of the legislative history shows the concern of Senator Jennings Randolph that postal customers not lose their local service, which is an important part of the community. The significance of having local postal service applies equally to stations and branches as it would to a main Post Office, as defined by the Postal Service. Certainly, the Pimmit Branch is an important part of the Pimmit Hills community. Closing it has created a huge hole in the heart of Pimmit Hills.

Petitioner respectfully submits that it may be necessary for the long-standing dispute about 39 U.S.C. § 404(d) to be addressed on the merits. Moreover, it is possible that this dispute may need to be addressed in the United States Court of Appeals for the District of Columbia Circuit. In the meantime, it is harmful to stations and branches and their customers to permit

this dispute to continue unresolved.

The unresolved dispute is reflected in the opposition submitted by the Postal Service. In its opposition at page 4, the Postal Service states that "the Postal Service satisfied the salient provisions of section 404(d)(5)(A) - (C)." However, the Postal Service fails to address the provisions of 39 U.S.C. § 404(d)(4). The Postal Service is apparently just ignoring that statutory provision.

The Postal Service violated 39 U.S.C. § 404(d)(4) in closing the Pimmit Branch. First, the Postal Service did not make the written determination available to persons served by the Pimmit Branch. Further, it closed the Pimmit Branch before the written determination was made available. The statute is clear that the Postal Service "shall take no action to close or consolidate a post office until 60 days after its written determination is made available to persons served by such post office."

In light of the failure of the Postal Service to comply with provisions of 39 U.S.C. § 404(d), the Pimmit Branch should be reopened.

The Postal Service also fails to address the substance of the argument about the moratorium. Because the Postal Service failed to give proper notice, it should not have closed the Pimmit Branch as of November 10, 2011. If the Postal Service had given the required notice and made its final

determination available, then the closing would likely have been scheduled during the moratorium, which began on November 19, 2011.

In addition, the Postal Service fails to address the concerns which led to the moratorium. Surely, if a moratorium is advisable on November 19, 2011, then closing the Pimmit Branch about a week earlier is not consistent with the circumstances favoring the moratorium. The Postal Service fails to argue why the bright-line date of November 19, 2011, for the moratorium mandates that a scheduled closing date of November 10, 2011, is well-considered and beneficial to the Postal Service and its customers.

REMEDY AND COSTS TO REOPEN

If there is no remedy to the failure of the Postal Service to comply with 39 U.S.C. § 404(d), then it can be questioned how effective that law is. The Postal Service should not be able to construe that law as it pleases and then simply argue that no remedy is available. One remedy that may be available is a remand by the Postal Regulatory Commission. If there is a remand, then presumably the Final Determination to close the Pimmit Branch would no longer be in effect.

Moreover, the Postal Service cannot now complain about any additional costs to reopen or for some other remedy. One purpose of seeking a suspension of the closing while the appeal is pending is to avoid undue

costs to the Postal Service. Now that the Postal Service has ignored that common-sense reason to delay closure until the appeal is concluded, it should not also be given credit for the need to avoid costs created by its own decision to close the Pimmit Branch before the appeal has been decided. Whatever costs the Postal Service may argue it has incurred are likely illusory or minimal at this time.

Further, the Postal Service has provided no record support whatever for any costs it has incurred. The costs of closing a profitable retail facility, such as the Pimmit Branch, and losing the revenue from that facility far outweigh any costs generated by implementing the November 10, 2011, closing of the Pimmit Branch.

CONCLUSION

For the foregoing reasons, Petitioner respectfully requests that the Pimmit Branch be reopened. In addition, the remedy may be for the Postal Regulatory Commission to remand the matter to the Postal Service.

Respectfully submitted,

/s/ Elaine Mittleman
Elaine Mittleman
2040 Arch Drive
Falls Church, VA 22043
(703) 734-0482
Petitioner